

CHAPMAN AND CUTLER

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Salt Lake City, Utah 84144
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March 26, 1996

1996

MAR 28 1996 -9 40 AM

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: The Detroit Edison Company
Leveraged Lease Financing of Gondola Railcars

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301 are two (2) executed copies of an Interim Use Agreement, dated January 31, 1996, a secondary document as defined in 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Owner/Manufacturer: Thrall Car Manufacturing Company
c/o Duchossois Industries, Inc.
845 Larch Avenue
Elmhurst, Illinois 60126

User/Lessee: The Detroit Edison Company
2000 Second Avenue
Detroit, Michigan 48226

A description of the railroad equipment covered by the enclosed document is attached to the enclosed ~~Termination of~~ Agreement as Schedule 1.

Also enclosed is a check in the amount of \$21.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Please feel free to contact the undersigned at (312) 845-2977 with any questions you may have with respect to the enclosed.

Very truly yours,

CHAPMAN AND CUTLER

By

August J. Francis
August J. Francis

AJF/b
Enclosure

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

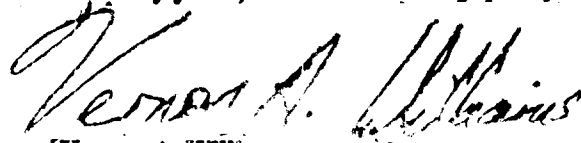
3/28/96

Karl T. Williams
Chapman And Cutler
111 West Monroe Street
Chicago, Illinois 60603-4080

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/28/96 at 9:40AM , and assigned recordation number(s). 19994, 19995-A, B, and C.

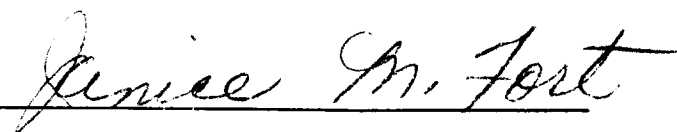
Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 105.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



INTERIM USE AGREEMENT

1994
MAR 28 1996 -9 40 AM

INTERSTATE COMMERCE COMMISSION

This Interim Use Agreement ("Agreement"), dated as of January 31, 1996, between THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Manufacturer") and THE DETROIT EDISON COMPANY, a Michigan corporation ("Lessee"), and

WITNESSETH:

WHEREAS, Manufacturer and Lessee have entered into a Purchase Order dated as of July 14, 1995, as revised and modified between Manufacturer and Lessee (the "Purchase Agreement") calling for Manufacturer to manufacture and deliver to Lessee and to accept and pay or arrange payment for six hundred forty (640) aluminum-bodied, doubletub gondola railcars (collectively, the "Railcars" and individually, "Railcar" as set forth on the attached Schedule 1; and

WHEREAS, Lessee has obtained commitments to finance the purchase of the Railcars pursuant to one or more permanent forms of financing (the "Financing") and has scheduled four closing dates, the first being March 28, 1996, (the "First Closing"), the second being April 29, 1996, (the "Second Closing") the third being May 30, 1996, (the "Third Closing") and the fourth being June 10, 1996, (the "Fourth Closing") cumulatively referred to as "Closing Dates", and

WHEREAS, Lessee desires that it be permitted to use the Railcars pending establishment of such Financing, solely as a bailee thereof, and Manufacturer is willing to grant such temporary custody and possession to Lessee upon terms and conditions hereinafter provided;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Manufacturer, as lessor and bailor, hereby agrees to deliver the Railcars and Lessee, as lessee and bailee, agrees to accept possession of the Railcars F.O.T. Cartersville, Georgia on the date the Railcars are released pursuant to the Purchase Agreement.

2. The rights of use and possession of Lessee hereunder in respect of each Railcar shall commence on the date of delivery by Manufacturer and end, as to each Railcar, on the Closing Date that payment of the Purchase Price is made by Lessee or its assignee pursuant to the Purchase Agreement (each a "Termination Date"). Upon payment to Manufacturer of the purchase price by or on behalf of the party or parties providing Financing, this Agreement shall automatically terminate with respect to Manufacturer for all Railcars for which payment is received without further action by or notice to either party hereto, except for those provisions which, in order to be given effect, should survive termination.

3. Upon delivery of Railcars, Lessee's representative shall execute a Certificate of Conformance, in the form of Exhibit A. During the term hereof for so long as the purchase price thereof shall not have been paid, title to any Railcars shall remain in Manufacturer with Lessee's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time Manufacturer delivers bills of sale to the party which has paid the purchase price therefor.

4. Nothing herein contained shall be construed as obligating Lessee to purchase any Railcar, it being the intention that any obligation to purchase is covered by the Purchase Agreement, as amended. In the event the purchase price is not paid on each scheduled Closing Date because the Financing is not available, Lessee agrees to pay Manufacturer in full for all Railcars for which payment has not been made.

5. Lessee shall permit no liens or encumbrances (other than the usual interchange of traffic rules and the lien of this Agreement of any kind to attach to the Railcars, and it agrees to indemnify and save Manufacturer harmless from any and all claims, expenses, costs or liabilities of whatsoever kind, including but not limited to reasonable attorneys' fees, which may arise by, through or under Lessee during the time any of the Railcars are in the possession of Lessee.

6. Neither Lessee nor any third party acquiring an interest in the Railcars by reason of the Financing shall, by virtue of this Agreement or the temporary possession and use of the Railcars by Lessee under or pursuant to this Agreement or of anything permitted to be done by Lessee hereunder in respect of the Railcars, acquire any title to or ownership of the Railcars or any portion thereof, and title to and ownership of the Railcars shall remain solely in Manufacturer until delivery of a bill of sale. Title to different Railcars may be transferred at different times and under separate bills of sale. When the purchase price of any Railcar has been paid in full to Manufacturer and Manufacturer has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Railcar without further action by or notice to any party concerned. Prior to delivery of any Railcar, Lessee shall record, at Lessee's expense, a fully signed counterpart of this Agreement with the ICC, and shall perform such other acts as may be requested to protect Manufacturer's interest. Simultaneously with payment in full for the Railcars, Manufacturer shall deliver to Lessee a release of Manufacturer's interest in the Railcars, such release to be in a form suitable for filing with the ICC and in a form supplied by the Lessee.

7. This Agreement is an arrangement under which Lessee will have temporary possession, custody, and use of the Railcars to be purchased from Manufacturer pursuant to the Purchase Agreement, and the risk of loss of the Railcars after acceptance of possession, in the manner contemplated by this Agreement is on Lessee. Lessee will, at all times while this Agreement is in effect and at its own expense, cause to be carried, and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are in keeping with risks assumed by (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance or operation by it of any Railcar; and (ii) property damage insurance on the Railcars; provided, Lessee may self-insure with respect to any or all the above; and provided further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other railcars owned or leased by Lessee.

8. In the event Lessee shall, in violation of its obligations under the Purchase Agreement and hereunder, fail to accept and pay (or cause payment to be made) for the Railcars delivered on any of the four Closing Dates, Manufacturer may in addition to any other remedies it may have, take possession of all or any Railcars not therefore purchased, and thenceforth hold, possess and enjoy the same free from any right of Lessee, its successors or assigns.

9. Lessee and Manufacturer each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted.;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by all necessary corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and assuming the due authorization, execution and delivery hereof by the other party hereto, this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

(c) No government authorization, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Railcars hereunder on the terms and conditions provided herein, or if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.

10. The parties hereto agree that the execution by Manufacturer of this Agreement or delivery by Manufacturer of the Railcars as contemplated by this Agreement, shall not relieve Lessee of its obligations to take and pay for the Railcars in accordance with the terms of the Purchase Agreement.

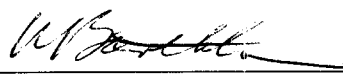
11. Lessee shall, at its own expense, keep and maintain or cause to be kept and maintained the Railcars in good order and running condition, normal wear and tear excepted, and will, at its option, repair or replace or indemnify Manufacture for those Railcars which may be damaged or destroyed by any cause during the term of this Agreement. No modification of any Railcar, or any part thereof, except for appropriate markings, may be made without the prior written approval of Manufacturer. Lessee shall maintain, use and operate the Railcars in compliance in all material respects with all applicable laws, rules and regulations,

12. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois.

13. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts (or upon separate signature pages bound together into one or more counterparts) each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.


IN WITNESS WHEREOF, each party hereto has caused this Interim Use Agreement to be executed by its authorized representative.

(LESSEE)

By: 

Title: Manager-Fuel Supply

(MANUFACTURER)

By: 

Title: Vice President Finance

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

On this, the 22nd day of March, 1996, before me, a Notary Public in and for said County and State, personally appeared Norman H. Barthlow, of THE DETROIT EDISON COMPANY, who acknowledged himself/herself to be a duly authorized ~~officer~~ ^{representative} of THE DETROIT EDISON COMPANY, and that, as such ~~officer~~, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Bernadette E. Wilson

Name: Bernadette E. Wilson
Notary Public, Wayne County, Michigan
My Commission Expires: 4-12-97
Residing in Wayne County

BERNADETTE E. WILSON
Notary Public, Wayne County, MI
My Commission Expires Apr 12 1997

STATE OF IL)
)
COUNTY OF COOK)

On this, the 31st day of March, 1996, before me, a Notary Public in and for said County and State, personally appeared Robert A. Walk, of THRALL CAR MANUFACTURING COMPANY who acknowledged himself/herself to be a duly authorized officer of THRALL CAR MANUFACTURING COMPANY, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Delphene C. Brands
Name: _____
Notary Public
My Commission Expires: 12/4/97
Residing in Will County

~~~~~  
"OFFICIAL SEAL"  
DELPHENE C. BRANDS  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 12/5/97  
~~~~~

Schedule 1

Equipment: 640 4530 cubic foot Aluminum-bodied, Doubletub
Gondola Railcars

Manufacturer: Thrall Car Manufacturing Company (Cartersville, Georgia)

Road Numbers; DEEX 6488 - 6877 inclusive
DETX 1001 - 1250 inclusive